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13/524,059	06/15/2012	Hartmut KUEHN	65765	1244

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ROHM AND HAAS COMPANY
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EXAMINER

BROOKS, KREGG T

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HARTMUT KUEHN, MARGARITA PERELLO, and
EVA-MARIE MICHALSKI

Appeal 2016-001546
Application 13/524,059
Technology Center 1700

Before KAREN M. HASTINGS, RAE LYNN P. GUEST, and
DEBRA L. DENNETT, *Administrative Patent Judges*.

PER CURIAM.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134 from the Examiner's rejection under 35 U.S.C. § 103(a) of claims 1–7 and 10–12. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We affirm.

¹ The real party in interest is stated to be Dow Global Technologies LLC (Br. 2).

Claim 1 is representative:

1. A polymer composition comprising:
At least one epoxy resin;
 - (b) at least one vinyl ester polymer selected from
 - (i) a vinyl ester homopolymer,
 - (ii) vinyl ester copolymers comprising in polymerized form only vinyl ester monomers, and
 - (iii) ethylene/vinyl ester copolymers comprising in polymerized form ethylene and vinyl ester monomer(s) and optional ethylenically unsaturated comonomers which are not vinyl esters; and
 - (c) at least one epoxy functional nonionic surfactant having a molecular weight within the range of from 1,000 to 7,000 Daltons which is different from an alkyl polyglycol ether or alkylaryl polyglycol ether having 8 to 40 ethylene oxide units.

The Examiner's rejections rely on either one of Kohlhammer (US 6,534,177 B2, iss. Mar. 18, 2003) or Faatz (US 2010/0197831 A1, pub. Aug. 5, 2010) each in view of Piechocki (US 5,118,729, iss. June 2, 1992), with the rejection of dependent claim 4 further including Han (WO 02/28798 A2, pub. Apr. 11, 2002) (*see, e.g.*, Br. 4 (which includes a complete listing of the rejections)).

Upon consideration of the evidence of record and each of Appellants' contentions as set forth in the Appeal Brief filed July 9, 2015, we determine that Appellants have not demonstrated reversible error in the Examiner's rejections (*e.g.*, Ans. 2–11 (mailed Sept. 21, 2015)). We sustain the rejection for the reasons expressed by the Examiner in the Final Office Action and the Answer. We add the following for emphasis.

As pointed out by the Examiner, Appellants have not adequately addressed the Examiner's rejection of claim 1 based on Kohlhammer and Piechocki (Ans. 9 (explaining that Appellants' argument focuses on a

limitation only present in dependent claim 2 which was not included in this rejection); *see generally* Br. (no reply brief was filed)).

Appellants have also not refuted the Examiner's determination that Piechocki teaches an epoxy functional nonionic surfactant having a molecular weight as recited in claim 1 (Ans. 10). Nor have Appellants shown reversible error in the Examiner's determination that "Piechocki further teaches that such surfactants are useful for emulsifying epoxy resins in water, which is the ultimate end use of the epoxy compositions taught by Kohlhammer and Faatz (both of which teach epoxy powders redispersible in water)." (*Id.*)

Appellants have also not shown error in the Examiner's determination with respect to claim 4, that one of ordinary skill in the art, using no more than ordinary creativity, would have used some of the higher molecular weight nonionic surfactant of Han along with the nonionic surfactant of Piechocki in the epoxy compositions of either Kohlhammer or Faatz, as each surfactant was known for use in dispersing epoxy resins (Ans. 10, 11; *see generally* Br.). *Cf. In re Kerkhoven*, 626 F.2d 846, 850 (CCPA 1980) ("It is [generally considered] *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a composition which is to be used for the very same purpose.").

In light of the Examiner's response to Appellants' arguments (Ans. 9–11; Br. 4–6), Appellants have not shown any reversible error in the Examiner's 103 rejections.

Appeal 2016-001546
Application 13/524,059

DECISION

The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED